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April 21, 2010

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: January 5, 2010

Case Number: TSO-0876

This Decision considers the eligibility of XXXXXXXX XXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." 1/ As explained below, it is my decision that the individual should not be granted an access authorization. 2/

I. BACKGROUND

1/ Decisions issued by the Office of Hearings and Appeals (OHA), with names and other personal identifying information deleted, are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine at <http://www.oha.doe.gov/search.htm>.

2/ Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

The individual has worked for a Department of Energy (DOE) contractor since August 2006. The individual's employer requested that he be granted an access authorization and, in March 2009, the individual submitted a Questionnaire for National Security Positions (the 2009 QNSP) to the DOE. DOE Exhibit 9. An Office of Personnel Management (OPM) investigator conducted a Personal Subject Interview with the individual in April 2009 (the 2009 PRSI). DOE Exhibit 11. Based on information that the individual reported on his 2009 QNSP and at the 2009 PRSI, the Local Security Office (LSO) conducted a Personnel Security Interview with the individual in July 2009 (the 2009 PSI). DOE Exhibit 10. In addition, the individual was evaluated in August 2009 by a DOE-consultant psychologist (the DOE-consultant Psychologist), who issued a Psychological Evaluation Report (the "2009 Psychological Report") setting forth her conclusions and observations. DOE Exhibit 6.

In November 2009, the LSO issued a Notification Letter to the individual, together with a statement setting forth the information that created a substantial doubt about the individual's eligibility to hold a DOE security clearance (Enclosure 2). In Enclosure 2, the LSO finds that the DOE-consultant Psychologist has diagnosed the individual as suffering from Alcohol Abuse, a diagnosis that raises security concerns under the provisions of 10 C.F.R. § 710.8(j) (Criterion J). The LSO finds that the DOE-consultant Psychologist diagnosed the individual as suffering from an illness or mental condition, i.e., alcohol abuse and "Impulse Control Disorder, Not Otherwise Specified", which causes or may cause a significant defect in judgment or reliability. This raises security concerns under the provisions of 10 C.F.R. § 710.8(h) (Criterion H).

The LSO refers to the following information regarding the individual's use of alcohol:

1. At the time of his psychological evaluation in August 2009, he was consuming 5-6 thirty ounce mugs of beer on either Friday or Saturday nights; which is equivalent to 17.5 twelve ounce beers;
2. He admitted to abusing alcohol in the past and that he has passed out as a direct result of his alcohol abuse. He acknowledged that he has forgotten what he has done while drinking alcohol on one or two occasions;
3. He acknowledged that his alcohol usage resulted in numerous arguments with his fiancée, which ultimately contributed to their final break-up. He admitted that

his usage of alcohol changes his demeanor, makes him yell, and he becomes more verbally aggressive; and
4. He admitted that a friend has previously suggested on a couple of occasions that he drinks too much alcohol.

The LSO also refers to the following information concerning the individual's alcohol-related law enforcement incidents:

1. In 2000, the individual was arrested and charged him with Driving Under the Influence (DUI). This arrest resulted in him entering a serious offenders program;
2. In 1999, the individual was arrested and charged with DUI. He recalled having a .12 on the breathalyzer;
3. In 1996, the individual was arrested and charged with DUI. He recalled blowing a .10 on the breathalyzer;
4. In 1992, the individual was arrested and charged with Operating a Motor Vehicle Impaired by Alcohol; and
5. From June 2006 through November 2008, law enforcement was called to his residence on five or six occasions to address a variety of domestic dispute problems. During these incidents, he admitted he had been consuming alcohol.

Finally, the LSO refers to the following information concerning the individual's alcohol-related financial problems:

1. With a self-admitted gambling problem, he admitted that his alcohol usage resulted in him gambling longer, more frequently, and spending more money. He specifically felt that his usage of alcohol exacerbated his gambling losses. He acknowledged feeling guilty about his gambling; and
2. He admitted that his usage of alcohol contributed to his overall financial problems.

Enclosure 2 of Notification Letter, citing 2009 PSI and 2009 Psychological Report. DOE Exhibit 1.

The individual requested a hearing (hereinafter "the hearing") to respond to the concerns raised in the Notification Letter. On January 7, 2009, the Office of Hearings and Appeals Director appointed me the Hearing Officer in this case. At the hearing I convened in this matter in March 2010, I received testimony from five persons: the individual, his father, his former fiancée, his supervisor, and the DOE-consultant Psychologist.

II. APPLICABLE STANDARDS

A DOE administrative review proceeding under this Part is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we apply a different standard, which is designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d).

This standard implies that there is a presumption against granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (the "clearly consistent with the interests of national security test" for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. *Personnel Security Hearing*, Case No. VSO-0002 (1995).

Once a security concern has been found to exist, the individual has the burden of going forward with evidence to rebut, refute, explain, extenuate or mitigate the allegations. *Personnel Security Hearing*, Case No. VSO-0005 (1995), *aff'd*, Case No. VSA-0005 (1995). See also 10 C.F.R. § 710.7(c).

III. ANALYSIS OF TESTIMONY AND FINDINGS

A. Criterion J Concerns

1. Diagnosis

In her testimony at the hearing, the DOE-consultant Psychologist did not revise her diagnosis of Alcohol Abuse, and indicated that the individual should be actively engaged in recovery activities to avoid a future relapse. TR at 124-131. The individual admitted that he has had problems with alcohol in the past, and that the alcohol problems described in the DOE-consultant Psychologist's

report are basically true and accurate. TR at 77-81, 97 3/ He also testified that he considers himself to be an alcoholic. TR at 97. Based on this testimony, I conclude that there is no dispute that the individual was properly diagnosed as suffering from Alcohol Abuse. In addition, I have reviewed the information in the record of this proceeding concerning the individual's history of alcohol consumption and conclude that there is ample support for this diagnosis. I therefore turn to the issue of whether the individual has demonstrated rehabilitation or reformation from this condition.

2. The Individual's Assertions Regarding His Recent Use of Alcohol

The individual testified that he does not agree with the DOE-consultant Psychologist that he must abstain from alcohol in order to avoid a future relapse into problem drinking. He admits that he has had legal problems with alcohol in the past, and that his heavy consumption of alcohol in 2006 through 2008 resulted in alcohol-induced domestic arguments resulting in police interventions, and in his fiancée moving out and ending their relationship in March 2009. TR at 77-79. He also admits that he drank heavily for a period of time after his fiancée left him. TR at 105. However, he contends that he was last intoxicated in July or August 2009 (TR at 92), and that, in the four and a half to five months prior to the hearing, he has consumed only moderate amounts of alcohol. He testified that in late October 2009, he stopped visiting a casino where he purchased "bottomless" mugs of beer, and that he now usually limits himself to one or two 24-ounce cans of beer on Thursday nights (the end of his work week) and on Saturday nights

3/ The individual contends that the DOE-consultant Psychologist's report erroneously describes him as being arrested for drunk driving in 2001. He contends that his last DUI was in 2000, and that he was subsequently arrested for DUI in 2001 based on an outstanding warrant generated by his 2000 DUI. TR at 81-86. His father's testimony at the hearing supported this assertion. TR at 41-42. The DOE-consultant Psychologist stated that the 2001 arrest was included in the OPM records that she was provided prior to her interview with the individual, but that it is possible that the individual's explanation is accurate. TR at 123-124. The Notification Letter does not include a 2001 DUI in its statement of concerns. Even if I were to accept the individual's assertions, I find that his explanation does not mitigate the DOE's concerns. The DOE-consultant Psychologist testified that even if the individual had no drunk driving incident in 2001, it would not affect her diagnosis or recommendations for treatment. TR at 124.

after he returns his daughter to his ex-fiancee following her weekly overnight visit. TR at 71-72. He stated that on a "couple" of occasions, he had three or four of the 24-ounce cans of beer on a Thursday or a Saturday night, but that he would not go beyond that amount. TR at 73. He testified that from Sunday until Thursday evening, he now consumes no alcohol, unless he is on vacation. TR at 72-73, 93.

The individual stated that during a court-mandated alcohol treatment program that lasted three years (2001 until 2003), he successfully abstained from alcohol. He testified that he does not know why he resumed consuming alcohol in about 2005. TR at 76-77. He now contends that he does not need to stop consuming alcohol or undertake alcohol treatment because he believes that he can keep his alcohol consumption at his current moderate level. He stated that having beer on Thursday and Saturday nights helps him to unwind and relax from the week, and that he has avoided problem areas relating to alcohol consumption, such as drunk driving, arguments, and excessive gambling. He testified that he currently does not consume alcohol while he is gambling. He asserted that he is now paying his bills and making regular child support payments to his ex-fiancee. He stated that he believes that his motivation to keep his present job and to have a good relationship with his daughter will be sufficient to keep him from abusing alcohol in the future. TR at 97-99, 113-114.

3. Corroboration of Recent Moderate Alcohol Use

At the hearing, the individual submitted testimony and evidence aimed at corroborating his recent moderate use of alcohol. The individual's former fiancée testified that she and the individual lived together for two or three years, and that they have a young daughter. TR at 11, 12. She stated that from about 2006 through 2008, the individual's drinking aggravated a conflict with her brother, who was living with them, and that she would hide in the back of the house to avoid the screaming and arguing, and would call the police. TR at 17-19. She stated that the individual refused to do anything about his drinking for some time. He eventually moderated his drinking, but it was too late to save their relationship. TR at 19-21, 23. The former fiancée testified that the individual has done exceptionally well with his drinking in the period since she moved out. TR at 34. She stated that she sees the individual every Friday when he picks up their daughter, and that she has never observed him to be under the influence of alcohol. TR at 12-13. She also stated that she spends some social time with the individual about twice a month. TR at 27-28. She testified that the individual now is responsible with his money,

and that he has never been late with his child support payments. TR at 15. She stated that he does not drink around his daughter, and does not keep alcohol in his house. TR at 21. She stated that after he returns their daughter, he will go out for a beer or two to relax. TR at 24. She stated that he has improved greatly in the way that he talks to her, and how he treats his child. TR at 26.

The individual's father testified that the individual drank heavily when the individual was living with him in the 1990's. He stated that since 2000, the individual totally changed, and now only drinks moderately. He stated that the individual and his daughter visit his home regularly, and that the individual never drinks around his daughter. He stated that the individual will never drink and drive, but will only consume alcohol if there is a designated driver. He stated that he last witnessed the individual consume alcohol when he drank a couple of beers after they played golf. TR at 40-54.

The individual's first line supervisor testified that he has supervised the individual for about three years, and that he is one of his best workers, with a better attendance record than most of his other workers. He stated that he has never observed the individual appearing intoxicated or hung over. He testified that the individual completed some anger management counseling after losing his temper with a co-worker in 2009, and that he has been much better since then. TR at 57-67. Finally, the individual submitted letters from a co-worker and a foreman which state that the individual is a very good worker and is devoted to his daughter. See Individual's March 11, 2010 submissions.

Based on this testimony, I find that the individual has not effectively corroborated his assertion that he has consumed only moderate amounts of alcohol since late October 2009. The individual lives alone, and his contact with his former fiancée and his father are limited to child visitation and/or occasional social contacts. While I have no reason to believe that the individual is not being truthful about his current consumption of alcohol, his limited contact with these witnesses is insufficient to substantiate it. In fact, his ex-fiancée's testimony indicates that she was unaware that the individual drank heavily for several months after she ended their relationship and moved out. His father's testimony indicates that he was unaware of any alcohol abuse by his son after his final DUI in 2000. The individual's supervisor was unaware of the individual's heavy drinking and intoxication in 2006 through 2008 that led his former fiancée to call the police on several occasions. Accordingly, I conclude that

the individual has not established that he last consumed alcohol to intoxication in about August 2009, and that he has consumed only moderate amounts of alcohol since late October 2009.

4. *Rehabilitation and Risk of Relapse*

After hearing the evidence presented by the individual and his witnesses, the DOE-consultant Psychologist testified that she was encouraged that the individual currently is being very careful by not drinking around his daughter and by not keeping alcohol in his house. However, she expressed concern that his alcohol history indicates that it is difficult for him to maintain a normal level of alcohol consumption over time. She stated that she believes that he still suffers from alcohol abuse, and that he has a "moderately high" risk of relapsing into alcohol abuse in the next five years. TR at 129-131. She stated that he is not a good candidate for controlled drinking, and that he should abstain from alcohol and attend substance abuse counseling in order to achieve rehabilitation from alcohol abuse. TR at 126-128.

After reviewing the entire record of this proceeding, I conclude that the individual has not mitigated the DOE's concerns arising from his diagnosis of alcohol abuse. See Guideline G, Paragraph 23 of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House (*Revised Adjudicative Guidelines*). I agree with the DOE-consultant Psychologist's expert opinion that the individual has not established a pattern of responsible use and remains at a moderately high risk for abusing alcohol in the future. See, e.g., *Personnel Security Hearing*, Case No. TSO-0726 (2009) (Hearing Officer gave deference to expert medical opinion in finding that rehabilitation was not yet established).

As discussed above, I find that the individual has not sufficiently corroborated his assertion that for the past five months, he has consumed only moderate amounts of alcohol. However, even if I accept his assertion, the individual's recent history of periods of moderation or abstinence followed by periods of alcohol abuse indicate that only sobriety and rehabilitation activities can ensure that he achieves a low risk of future relapses into problem drinking. The individual admitted in his testimony that following a period of sobriety from 2001 until 2005, he lapsed into problem drinking from 2006 through 2008, and again in the period from March until August 2009, after his fiancée ended their relationship. TR at 133. At this time, the individual continues to consume alcohol, and I accept the DOE-consultant Psychologist's conclusion that the

individual must commit himself to sobriety and to rehabilitation activities such as alcohol counseling and/or a sobriety program in order to achieve a low future risk of relapsing into the abuse of alcohol. I therefore conclude that the individual has not yet established that his long-term prognosis indicates a low risk for relapsing into alcohol abuse. Accordingly, I find that the individual has not yet resolved the DOE's Criterion J concerns. 4/

V. Criterion H Concerns

In her report, the DOE-consultant Psychologist finds that the individual suffers from alcohol abuse and an "Impulse Control Disorder, Not Otherwise Specified," which could cause a significant defect in his judgment or reliability. As discussed above, I find that the individual has not mitigated the concerns arising from his alcohol abuse diagnosis. The DOE-consultant Psychologist's diagnosis of "Impulse Control Disorder, Not Otherwise Specified," is based on the individual's admission that he has a gambling problem when he abuses alcohol, because his alcohol usage results in his gambling longer, more frequently, and spending more money. As summarized above, the individual testified that he currently is drinking and gambling moderately, and that he is careful not to consume alcohol while he is gambling. The DOE-consultant Psychologist opined at the hearing that the individual has made a very good start at keeping the gambling and drinking separate, but that they occur in the same establishment, and she continues to have a concern about his ability to keep them separate in the future if he should relapse into problem drinking. She therefore believes that the individual continues to suffer from an Impulse Control Disorder. TR at 132. I agree with the DOE-consultant Psychologist's conclusion. Because the individual's tendency to gamble impulsively is related to his alcohol consumption, he continues to be at risk for impulsive gambling until he has achieved rehabilitation from his alcohol abuse. Accordingly, I find that the individual has not mitigated the LSO's Criterion H Concerns.

4/ In this regard, I note that medical professionals often find that a full year of abstinence and alcohol treatment is necessary to establish rehabilitation, because a one year period allows an individual to go through a sufficient number of ups and downs that normally occur within a year to test whether he can withstand normal stresses without turning to alcohol. See *Personnel Security Hearing*, Case No. TSO-0726 (2009).

VI. CONCLUSION

For the reasons set forth above, I find that the individual suffers from Alcohol Abuse subject to Criterion J, and from an Impulse Control Disorder subject to Criterion H. Further, I find that this derogatory information under Criteria H and J has not been mitigated by sufficient evidence of rehabilitation. Accordingly, after considering all of the relevant information, both favorable and unfavorable, in a comprehensive and common-sense manner, I conclude that the individual has not demonstrated that granting him an access authorization would not endanger the common defense and would be clearly consistent with the national interest. It is therefore my conclusion that the individual should not be granted an access authorization. The individual or the DOE may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Kent S. Woods
Hearing Officer
Office of Hearings and Appeals

Date: April 21, 2010